PATENT
Customer No. 22,852
Attorney Docket No. 02481.1776

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	
Paul HABERMANN	Group Art Unit: 1652
Serial No.: 10/076,632	Examiner: David J. Steadman
Filed: February 19, 2002	
For: NUCLEIC ACIDS, PROTEINS, AND PROCESSES THEREOF SUCH AS USE OF FUSION PROTEINS WHOSE N-TERMINAL PART IS A HIRUDIN DERIVATIVE FOR THE PRODUCTION OF RECOMBINANT PROTEINS VIA SECRETION BY YEASTS	

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

RESPONSE TO RESTRICTION AND ELECTION OF SPECIES REQUIREMENT

In a restriction requirement mailed February 24, 2004, the Examiner requires restriction under 35 U.S.C. § 121 between Group I (claims 1-3 and 7-20, drawn to a nucleic acid, a multicopy vector, a plasmid, a host cell, and a process for the production of a fusion protein) and Group II (claims 4-6, drawn to a fusion protein). Applicant elects to prosecute Group I, with traverse.

Applicant respectfully traverses the restriction requirement because the Examiner has not shown there is a serious burden to examine the entirety of the subject matter together. In order for a restriction requirement to be proper, "[t]here must be a serious

burden on the examiner...." MPEP § 803. Thus, although the Examiner contends the search burden is high, Applicant respectfully submits that there is no serious burden to examine all of the claims together in this application.

The Examiner further requires an election of species under 35 U.S.C. § 121 between the following species: protein encoding for miniproinsulin, protein encoding for interleukin, protein encoding for lymphokine, and protein encoding for interferon. Applicant elects protein Y being miniproinsulin, with traverse. Claims 1, 2, and 7-20 read on this election.

Applicant traverses on the grounds that, to the extent the claims disclose and claim more than one species, the claims as written do not define an unreasonable number of species. The Examiner has identified that there are four allegedly distinct species identified in the application. *See* Office Action at page 3. Applicant respectfully contends that four is not an unreasonable number of species, and therefore this election requirement should be withdrawn. *See* 37 C.F.R. § 1.141 and MPEP § 806.04(a).

Accordingly, Applicant respectfully requests that the Examiner consider all of the species in this application. However, if the Examiner chooses to maintain the election requirement, and should the elected specie be found allowable, the Examiner should continue to examine the full scope of the elected subject matter to the extent necessary to determine the patentability thereof, *i.e.*, extending the search to a reasonable number of the non-elected species, as is the duty according to MPEP § 803.02 and 35 U.S.C. § 121.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

By: _____
Steven O'Connor
Reg. No. 41,225

Dated: March 24, 2004